

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CR-27-D

UNITED STATES OF AMERICA

v.

ERIC MIGUEL RIVERS,

Defendant.

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ORDER

On December 14, 2009, pursuant to a plea agreement [D.E. 14], Eric Miguel Rivers (“Rivers”) pleaded guilty to conspiracy to possess with the intent to distribute more than 500 grams of cocaine and more than 50 grams cocaine base (crack) in violation of 21 U.S.C. §§ 841(a)(1) and 846. See [D.E. 38] 15–29; [D.E. 1]. On March 25, 2010, the court held Rivers’s sentencing hearing. See Sentencing Tr. [D.E. 31]. At the hearing, the court adopted the facts contained in the Presentence Investigation Report (“PSR”). See id. 6–7; Fed. R. Crim. P. 32(i)(3)(A)–(B). The court calculated Rivers’s total offense level to be 31, his criminal history category to be V, and his advisory guideline range to be 168–210 months. See id. Pursuant to U.S.S.G. § 5K1.1, the court then granted the government’s motion for a downward departure. See id. 7–10; [D.E. 16]. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Rivers to 132 months’ imprisonment. See id. 23–31. Rivers did not appeal.

On June 12, 2012, the government moved to reduce River’s sentence under Federal Rule of Criminal Procedure 35(b). See [D.E. 20]. On April 11, 2013, the court granted the government’s motion, in part, and reduced River’s sentence to 114 months’ imprisonment. See [D.E.27]. Rivers wanted a larger reduction and appealed, but the United States Court of Appeals for the Fourth Circuit dismissed the appeal. See [D.E. 40].

On October 28, 2014, Rivers filed a motion for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782 to the Sentencing Guidelines. See [D.E. 44]. Rivers's new advisory guideline range is 140–175 months' imprisonment, based on a total offense level of 29 and a criminal history category of V. See Resentencing Report. Rivers requests a 95-month sentence. See [D.E. 46]. On August 26, 2015, Rivers filed a memorandum in support of his request. See id. On October 22, 2015, the government responded. See [D.E. 48].

The court has discretion to reduce Rivers's sentence. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Rivers's sentence, the court finds that Rivers engaged in serious criminal behavior. See PSR ¶¶ 6–10. His offense conduct involved a large amount of cocaine and crack cocaine. See id. Furthermore, Rivers's criminal history includes multiple drug convictions and a conviction for assault inflicting serious injury. See id. ¶¶ 12–20. Nonetheless, Rivers has engaged in some positive behavior while incarcerated on his federal sentence. See Resentencing Report; [D.E. 46] 6–8.

Having reviewed the entire record and all relevant policy statements, the court finds that Rivers received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a) and finds that further reducing Rivers's sentence would threaten public safety in light of his serious criminal conduct and criminal history. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Rivers's serious criminal conduct and criminal history do not support further reducing Rivers's sentence. Thus, the court denies Rivers's motion for reduction of sentence. See, e.g., Cole, 618 F. App'x at

178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, Rivers's motion for reduction of sentence [D.E. 44] is DENIED.

SO ORDERED. This 5 day of July 2016.



JAMES C. DEVER III
Chief United States District Judge